

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHNNY R. RUIZ AND ARTURO
MUNOZ,

PLAINTIFFS

v.

TIER ONE SECURITY,
INCORPORATED AND SHAWN
FLUITT,

DEFENDANTS

FILED

JUL 21 2014

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ~~RECEIVED~~
DEPUTY CLERK

CA NO. 5:14-cv-478-DAE

JURY DEMANDED

FIRST AMENDED ORIGINAL COMPLAINT AND DEMAND FOR JURY TRIAL

COME NOW Plaintiffs Johnny R. Ruiz and Arturo Munoz, by and through their undersigned attorney of record, and sue Defendants Tier One Security, Incorporated and Shawn Fluitt (“Defendants”) and in support thereof would show unto this Honorable Court as follows:

1. Plaintiffs bring this action for unpaid minimum wage, unpaid overtime compensation and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. §216(b) (“FLSA”).
2. Plaintiffs are individuals residing in Maverick County, Texas.
3. Defendant Tier One Security, Incorporated is a domestic corporation formed and existing under the laws of the State of Texas and maintains and operates its principal office in Boerne, Texas. Defendant can be served with process by serving its registered agent for service of process, Shawn Fluitt at 41109 IH-10, Ste. C, Boerne Texas 78006.

4. Defendant Shawn Fluitt is an individual who, upon information and belief, resides in Kendall County, Texas, and at all times relevant to this claim acted directly or indirectly in the interest of Defendant Tier One Security, Incorporated in relation to Plaintiffs' employment and was substantially in control of the terms and conditions of the Plaintiffs' work. Defendant Shawn Fluitt had the power to set and enforce, and/or has delegated to others the power to set and enforce, employment practices and policies, including hiring and firing employees, supervising and controlling employee work schedules or conditions of employment, determining rates and methods of the payment of wages, maintaining employment records, as well as other practices that directly and indirectly affect Tier One Security Incorporated's employees. Defendant Shawn Fluitt was an employer of the Plaintiffs as defined by 29 U.S.C. §203(d). Shawn Fluitt may be served with process at 41109 IH-10, Ste. C, Boerne Texas 78006.

5. Jurisdiction is conferred on this Court by Title 28 U.S.C. §1331, Title 28 U.S.C. §1337, and by Title 29 U.S.C. §216(b).

6. Venue is proper in this district under 28 U.S.C. § 1391.

7. At all times pertinent to this Complaint, Defendant Tier One Security, Incorporated was an enterprise engaged in interstate commerce. At all times pertinent to this Complaint, Defendant Tier One Security, Incorporated regularly owned and operated a business engaged in commerce or in the production of goods for commerce as defined by §3(r) and 3(s) of the Act, 29 U.S.C. §203(r) and 203(s). At all times pertinent to this Complaint, upon information and belief, Defendant Tier One Security, Incorporated had gross operating revenues in excess of \$500,000.00. At all times pertinent to this Complaint, Defendant Tier One Security, Incorporated employed two or more persons

engaged in commerce.

8. Plaintiffs were individually engaged in commerce.

9. Plaintiff Ruiz worked for Defendants from July 2012 through April 2014 as a security guard. Plaintiff Munoz worked as a security guard for Defendants from September 2011 through July 2014.

10. Defendants regularly refused to compensate Plaintiffs for all hours worked each week. No justification or excuse existed for Defendants' practice of failing to compensate Plaintiffs for all work performed each week.

11. As such, Defendants failed to pay Plaintiffs minimum wages for all hours worked. Failure to pay minimum wages was and is in violation of the FLSA. Defendants willfully violated Plaintiffs' rights under the FLSA.

12. During one or more weeks of Plaintiffs' employment with Defendants, Plaintiffs worked in excess of forty (40) hours (overtime hours).

13. During one or more weeks of Plaintiffs' employment with Defendants wherein Plaintiffs worked overtime hours, Defendants failed to pay Plaintiffs one and one-half times their regular rate of pay for each overtime hour worked (overtime compensation).

14. The acts described in the preceding paragraph violate the FLSA, which prohibits the denial of overtime compensation for hours worked in excess of forty (40) per workweek. Defendants willfully violated Plaintiffs' rights under the FLSA.

15. As a result of Defendants' unlawful conduct, Plaintiffs are entitled to actual and compensatory damages, including the amount of minimum wages and overtime which was not paid and which should have been paid.

16. Plaintiffs seek and are entitled to an award of liquidated damages in an amount equal to their unpaid minimum wages and their unpaid overtime pay pursuant to Section 216 of the FLSA.

17. Plaintiffs also seek compensation for expenses and costs of court that will be incurred in this action. Plaintiffs are also entitled to reasonable and necessary attorneys' fees pursuant to 29 U.S.C. § 216(b).

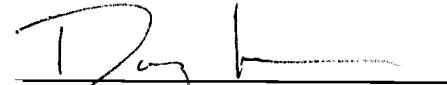
WHEREFORE, PREMISES CONSIDERED, Plaintiffs Johnny R. Ruiz and Arturo Munoz request that:

1. The Court assume jurisdiction of this cause and that Defendants be cited to appear;
2. The Court award damages to Plaintiffs as specified above with Defendants being found jointly and severally liable;
3. The Court award reasonable and necessary attorneys' and expert fees and costs;
4. The Court award Plaintiffs pre-and post-judgment interest at the highest rates allowed. Plaintiffs further pray for any such other relief as the Court may find proper, whether at law or in equity.

JURY TRIAL DEMAND

Plaintiffs demand a jury trial on all issues so triable.

Respectfully submitted,



Douglas B. Welmaker
Attorney-in-Charge
State Bar No. 00788641
DUNHAM & JONES, P.C.
1800 Guadalupe Street
Austin, Texas 78701
Tel: (512) 777-7777
Fax: (512) 340-4051
E-Mail: doug@dunhamlaw.com

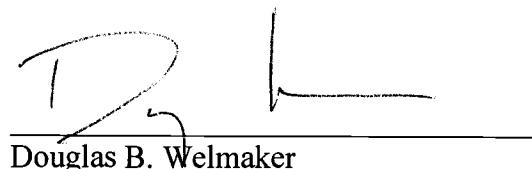
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on July 18, 2014, I served the foregoing upon opposing counsel in the manner indicated.

VIA CERTIFIED MAIL 91 7199 9991 7030 0906 8001

Michael L. Holland
Holland & Holland
1250 NE Loop 410, Suite 808
San Antonio, Texas 78209
Attorneys for Defendant


Douglas B. Welmaker